

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JUAN ROMAN,	:	
Plaintiff,	:	Civil No. 23-1512 (BRM) (CLW)
v.	:	
	:	OPINION
PATRICK NOGAN, <i>et al.</i> ,	:	
Defendants.	:	
	:	

MARTINOTTI, DISTRICT JUDGE

Before the Court is *pro se* plaintiff Juan Roman’s (“Plaintiff”) civil rights complaint (“Complaint”), filed pursuant to 42 U.S.C. § 1983 (ECF No. 1) and his application to proceed *in forma pauperis* (ECF No. 4). Based on his affidavit of indigence (ECF No. 4), the Court grants him leave to proceed *in forma pauperis* and orders the Clerk of the Court to file the Complaint.

At this time, the Court must review the Complaint, pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A, to determine whether it should be dismissed as frivolous or malicious, for failure to state a claim upon which relief may be granted, or because it seeks monetary relief from a defendant who is immune from such relief. For the reasons set forth below, the Court concludes the Complaint should be dismissed in its entirety.

I. BACKGROUND

Plaintiff is a pre-trial detainee confined in Hudson County Correctional Center (“HCCC”), in Kearney, New Jersey. (See ECF No. 1.) Plaintiff brings this civil rights action, pursuant to 24

U.S.C. § 1983, against the Administrator of Northern State Prison, Patrick Nogan (“Defendant”).¹ The Complaint alleges Defendant “failed to establish a COVID-19 policy/procedure which damaged [Plaintiff’s] health and mental health and possible future damage as well.” (ECF No. 1 at 4.) Plaintiff claims in January 2023 he contracted the COVID-19 virus after being placed in a “contaminated room” that others with COVID-19 had previously been placed in. (*Id.* at 5.) The Complaint alleges the cell was not properly cleaned. (*Id.* at 6.) Plaintiff claims he was then placed in quarantine in another “contaminated room.” (*Id.*)

Plaintiff seeks “any and all damages deemed fit by the Court for cruel conditions, health issues, mental conditions that jeopardize my life as well as my health dealing with the spread of COVID-19.” (*Id.* at 6.)

II. LEGAL STANDARD

A. Standard for a *Sua Sponte* Dismissal

Per the Prison Litigation Reform Act, Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321-66 to 1321-77 (April 26, 1996) (“PLRA”), district courts must review complaints in those civil actions in which a prisoner is proceeding *in forma pauperis*, *see* 28 U.S.C. § 1915(e)(2)(B), seeks redress against a governmental employee or entity, *see* 28 U.S.C. § 1915A(b), or brings a claim with respect to prison conditions, *see* 42 U.S.C. § 1997e. The PLRA directs district courts to *sua sponte* dismiss any claim that is frivolous, is malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. This action is subject to *sua sponte* screening for dismissal under 28 U.S.C. § 1915(e)(2)(B) and 1915A because Plaintiff is a prisoner who is proceeding as indigent.

¹ Plaintiff is currently housed at HCCC. It is unclear based on the Complaint why Plaintiff names the Administrator of Northern State Prison as the sole defendant in this matter.

According to the Supreme Court's decision in *Ashcroft v. Iqbal*, "a pleading that offers 'labels or conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To survive sua sponte screening for failure to state a claim, the complaint must allege "sufficient factual matter" to show that the claim is facially plausible. *Fowler v. UPMS Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Belmont v. MB Inv. Partners, Inc.*, 708 F.3d 470, 483 n.17 (3d Cir. 2012) (quoting *Iqbal*, 556 U.S. at 678). Moreover, while pro se pleadings are liberally construed, "pro se litigants still must allege sufficient facts in their complaints to support a claim." *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013) (citation omitted).

B. Section 1983 Actions

A plaintiff may have a cause of action under 42 U.S.C. § 1983 for certain violations of his constitutional rights. Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

Therefore, to state a claim for relief under § 1983, a plaintiff must allege, first, the violation of a right secured by the Constitution or laws of the United States and, second, the alleged deprivation was committed or caused by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011).

III. DECISION

A. Personal Involvement Requirement

In the Complaint, Plaintiff alleges Defendant is liable to him under 42 U.S.C. § 1983 because Defendant failed to establish a COVID-19 policy or procedure. (ECF No. 1 at 4.)

A defendant in a civil rights action must have personal involvement in the alleged wrongs. *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988). Section 1983 liability, therefore, requires a “showing of direct responsibility” by the named defendant and eschews any “theory of liability” in which defendants played “no affirmative part in depriving any[one] . . . of any constitutional rights.” *Rizzo v. Goode*, 423 U.S. 362, 376–77 (1976). In other words, to establish Section 1983 liability, “a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676.

Notwithstanding the personal involvement requirement, a plaintiff may establish supervisor liability under § 1983 by showing: (1) liability based on an establishment of policies, practices, or customs that directly caused the constitutional violation; or (2) personal liability based on the supervisor participating in the violation of the plaintiff's rights, directing others to violate the plaintiff's rights, or having knowledge of and acquiescing to a subordinate's conduct. *Doe v. New Jersey Dep't of Corr.*, No. 14-5284, 2015 WL 3448233, at *9 (D.N.J. May 29, 2015). “Allegations of participation or actual knowledge and acquiescence . . . must be made with appropriate particularity.” *Rode*, 845 F.2d at 1207.

Here, Plaintiff fails to plead any facts against Defendant Nogan for the Court to infer reasonably that Defendant was directly responsible for the conditions of Plaintiff's confinement. See *Iqbal*, 556 U.S. at 676. Plaintiff fails to allege any facts to show that Defendant Nogan, the Administrator of Northern State Prison, was involved in or responsible for the conditions at HCCC.

Moreover, to the extent Plaintiff attempts to assert a claim against Defendant based on his role as supervisor, the Complaint fails to plead sufficient facts to show Defendant established policies, practices, or customs that directly caused the conditions at HCCC, or he directed staff at HCCC to violate Plaintiff's rights, or he had knowledge of and acquiesced to conduct at HCCC that violated Plaintiff's rights. *See Doe*, 2015 WL 3448233, at * 9. Accordingly, the Complaint is dismissed without prejudice for failure to state a claim for relief.

IV. CONCLUSION

For the reasons stated above, the Complaint is dismissed without prejudice in its entirety pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A for failure to state a claim upon which relief may be granted. Because it is conceivable Plaintiff may be able to supplement his pleading with facts sufficient to overcome the deficiencies noted herein, the Court will grant Plaintiff leave to move to re-open this case and to file an amended complaint. An appropriate order follows.

Dated: April 17, 2023

/s/ Brian R. Martinotti
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE